

MEMO# 25907

February 14, 2012

ICI Files Comment Letter on SEC Proposal Prohibiting ABS Conflicts of Interest

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 8-12
FIXED-INCOME ADVISORY COMMITTEE No. 6-12
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 7-12
SEC RULES MEMBERS No. 12-12 RE: ICI FILES COMMENT LETTER ON SEC PROPOSAL
PROHIBITING ABS CONFLICTS OF INTEREST

On February 13, 2012, ICI filed a comment letter with the Securities and Exchange Commission ("Commission") on proposed Rule 127B ("Proposed Rule") under the Securities Act of 1933 ("Securities Act"), which would implement the prohibition under Section 621 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") against material conflicts of interest in connection with certain securitizations. Our comment letter is attached, and is summarized below.

The comment letter generally supports the Proposed Rule, as it would serve to protect investors in asset-backed securities ("ABS") against certain conflicts of interest which may be raised by the activities of securitization participants. Registered investment companies, however, also may be affiliates of entities that structure or distribute ABS and therefore may fall within the Proposed Rule's scope. The letter explains that actions taken by a registered investment company in connection with investing in ABS, through its investment adviser acting in a fiduciary capacity, do not raise the conflicts of interest the Proposed Rule was intended to address. It requests that the Commission clarify that the Proposed Rule excludes such activities.

To provide greater certainty to market participants, the letter also recommends that the Commission define, in the final rule, the five conditions the Commission has proposed as necessary for the rule to apply, define persons subject to the Proposed Rule (the Commission proposes categories of persons, but does not define them in the Proposed Rule), and clarify that a security issued by a registered investment company would not be treated as an ABS for purposes of the rule. The letter explains that, while the Proposed Rule

references the broad definition of “asset-backed security” in the Securities Exchange Act of 1934, that definition should not be interpreted to include securities issued by registered investment companies that invest in debt securities or other fixed-income instruments, as investment companies have not been considered to issue ABS, nor have their securities been classified as ABS.

The letter addresses certain examples raised by the Commission involving the use of information barriers to potentially address the types of conflicts of interest against which the Proposed Rule was designed to protect. We explain that the information barriers currently used in multi-service financial firms can, and do, prevent these conflicts of interests.

The letter supports the Commission’s proposed exception in the Proposed Rule for liquidity commitments. It recommends, however, that the Commission state expressly in the final rule that commitments to provide liquidity may be provided through means other than just purchases and sales of ABS. We also express concern about how the proposed exception for liquidity commitments would relate to the regulations that have been proposed to implement Section 619 of the Dodd-Frank Act, commonly known as the “Volcker Rule” (“Volcker Rule Proposal”).

The Commission provides examples of how the Proposed Rule’s exception for liquidity commitments would apply to liquidity facilities provided by securitization participants in connection with notes issued by asset-backed commercial paper programs. Certain restrictions under the Volcker Rule Proposal, however, could be interpreted to not permit such liquidity arrangements for bank-sponsored or advised programs, which would threaten the viability of such programs. The letter explains that such a result would be inconsistent with Congress’ intent in enacting the exception for liquidity commitments in Section 621 of the Dodd-Frank Act, and is unnecessary to address the conflict of interest concerns against which the Volcker Rule was designed to protect. It also would be inconsistent with the Commission’s express intent as stated in the release for the Proposed Rule. The letter states that ICI addresses this issue further in the comment letter we submitted on the same day on the Volcker Rule Proposal.

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[Attachment](#)